

This language is included in the lender liability clarification letter:

The intent of this letter also is to clarify the [Name of Lender]'s environmental liability under the state's Hazardous Waste Law, Ch. 291, Wis. Stats., if it were to become an "owner" of the Property, where the soil, groundwater or both may be contaminated with hazardous waste compounds. The US EPA has granted the Department the ability to exercise enforcement discretion in determining whether or not to hold a local government liable for clean-up costs, as an "owner" of a property with hazardous waste implications. The Department may exercise this enforcement discretion if a lender takes title to a property through methods consistent with a lender exemption criteria in the state Spill Law. In addition to meeting these statutory criteria, a lender would need to determine if any containerized material is defined as a hazardous waste, and properly manage the containerized waste.

The Department believes that the [Name of Lender] would meet the conditions of a lender exemption in s. 292.21, Wis. Stats., if it takes title through [identify method of acquisition]. In addition, the Department agrees to exercise enforcement discretion under Wisconsin's Hazardous Waste Management Laws, regarding the provisions of Ch. 291, Wis. Stats., and rules promulgated under that chapter. The Department will not hold the [Name of Lender] liable for the investigation or clean-up of the Property under either the state's Spill Law or Hazardous Waste Laws, if the following requirements are satisfied:

- the [Name of Lender's] method of acquiring title to, or possession, or control of real property is through the enforcement of a security interest;
- the [Name of Lender] properly manages any containerized hazardous waste materials in accordance with ch. NR 600, Wis. Admin. Code;
- the discharge of a hazardous substance was not caused by an action taken by the [Name of Lender], or by a failure of the [Name of Lender] to act;
- the [Name of Lender] agrees that any material or environmental media generated at the Property (e.g., contaminated soil generated as part of trenching for utilities) will be managed in accordance with applicable federal and state laws; and
- the [Name of Lender] understands that a lender exemption, and the hazardous waste enforcement discretion decision by the Department, will continue throughout the [Name of Lender]'s ownership of the Property and beyond, but is not transferable from the [Name of Lender] to future owners.